

SECOND ADDENDUM TO SETTLEMENT AGREEMENT

This Second Addendum to the Settlement Agreement ("Second Addendum") is entered into effective as of November 21, 2018, by and between the City of Palm Springs, a California charter city and municipal corporation ("City" or "Plaintiff"), and Kenneth Irwin Jr. ("Mr. Irwin") Individually, and the Kenneth F. Irwin Revocable *Inter Vivos* Trust by and through its authorized representatives and trustees, Kenneth Irwin, Jr., Carol Ohanesian, and Fiduciary Trust International of California, by and through its Managing Director and Trust Counsel, Bryan Kirk ("Trust" and collectively with Mr. Irwin, "Owner" or "Defendant"), concerning the real property commonly known as 1077 E. Granvia Valmonte, Palm Springs, CA (the "Property"). The City and Owner are sometimes referred to herein individually as a "Party" and collectively as the "Parties".

RECITALS

WHEREAS, the Parties entered a "Settlement Agreement," dated on or about November 15, 2017 ("Agreement"), to settle the lawsuit entitled City of Palm Springs v. Kenneth Irwin Jr., *et al.*, Riverside Superior Court Case No. PSC 1606276 (the "Litigation") and related claims and disputes between the Parties;

WHEREAS, the Parties thereafter adopted terms in addition to those included in the Agreement as set forth in an "Addendum to Settlement Agreement"

WHEREAS, it is the desire of the Parties by this Second Addendum to **(1)** move all future RoboLights Holiday Light Events to a new site in a commercial location remote from any residential occupancy, to reduce impacts on residents (such as audible and visual disruption, traffic and parking congestion), and ultimately to address concerns expressed by some in the area surrounding the Property with respect to the residential character of their neighborhood, and **(2)** retain the artistic and cultural history of the RoboLights Holiday Light Event at a new commercially zoned location, for the enjoyment of citizens of and visitors to Palm Springs;

WHEREAS, the Parties intent is to accomplish these goals as detailed herein, Owner has agreed that this year will be the last RoboLights Annual Holiday Light Event taking place at the Property, and the City has agreed to provide assistance to RoboLights in relocating the event to an acceptable commercial location; and

WHEREAS, after this year RoboLights will never place any lights on the RoboLights artwork visible at the Property from public right-of-way or any residential property adjacent to the Property except pursuant to the terms and conditions of a City-issued "Event House Permit;" and

WHEREAS, the Parties now wish to amend the terms and conditions under which the "RoboLights Holiday Light Event" ending on January 2, 2019 may take place, to address the terms and conditions under which any future RoboLights event may take place, whether at the Property or elsewhere in the City, and to execute this Second Addendum to accomplish these purposes.

AGREEMENT

NOW THEREFORE, with the intent of being legally bound hereby, in consideration of the mutual covenants and promises hereinafter set forth, and other good and valuable consideration, which the parties acknowledge is sufficient to create a legally binding agreement, the parties agree as follows:

1. **TERM SHEET RE AGREEMENT BETWEEN THE PARTIES, EFFECTIVE DATE.**

The Parties have jointly prepared and agreed upon such understandings, agreements, warranties and covenants as are documented in the “RoboLights 2018-19 - Term Sheet” attached to, and incorporated in this Second Addendum as **EXHIBIT A** (the “Term Sheet”). This Second Addendum, including EXHIBIT A, shall be effective and binding between the Parties on November 20, 2018.

2. **TERMS AND CONDITIONS FOR 2018-19 ROBOLIGHTS PERMIT.** The Parties have jointly prepared and agreed upon the terms and conditions pursuant to which the RoboLights Event for 2018-2019 shall take place. These terms and conditions are attached to and incorporated by this reference in this Second Addendum as **EXHIBIT B**.

3. **CONSTRUCTION.** This Second Addendum shall be deemed fully incorporated into the Agreement as amended by the Addendum. To the extent that any provision of this Second Addendum conflicts with any provision of the Agreement or the Addendum, the Second Addendum shall supersede and control.

4. **SEVERABILITY.** If any provision of this Second Addendum shall be deemed for any reason to be invalid, illegal, or unenforceable, such provision shall be severed from the remainder of this Second Addendum, and that remainder shall continue in full force and effect.

SIGNATURES FOLLOW

IN WITNESS WHEREOF, the parties have executed this Second Addendum as of the date first above written.

Date: _____

By: _____
KENNETH IRWIN, JR., Individually

THE KENNETH F. IRWIN REVOCABLE INTER VIVOS TRUST

Date: _____

By: _____
KENNETH IRWIN, JR.
Trustee

Date: _____

FIDUCIARY TRUST INTERNATIONAL OF
CALIFORNIA, Trustee

By: _____
BRYAN KIRK
Managing Director and Trust Counsel

Date: _____

By: _____
CAROL OHANESIAN
Trustee

CITY OF PALM SPRINGS

Date: _____

By: _____
DAVID H. READY
City Manager

Approved as to Form:

Date: _____

By: _____
EDWARD Z. KOTKIN
City Attorney

EXHIBIT A

EXHIBIT A

RoboLights 2018-19 - TERM SHEET

November 21, 2019

1. For purposes of this Term Sheet, “RoboLights” means and includes **(i)** Kenneth Irwin Jr., Individually (“Mr. Irwin”) and **(ii)** the Kenneth F. Irwin Revocable *Inter Vivos* Trust, by and through its authorized representatives and trustees, Kenneth Irwin Jr., Carole Ohanesian, and Fiduciary Trust International of California, by and through its Managing Director and Trust Counsel, Bryan Kirk (the “Trust”).
2. For purposes of the Term Sheet, “City” means the City of Palm Springs, a California charter city and municipal corporation.
3. The RoboLights Annual Holiday Light Event (“RoboLights Annual Holiday Light Event”) is defined as a Holiday illumination of sculptures and structures on or about the Property located at 1077 E. Granvia Valmonte, Palm Springs, California (“Property”) whereon members of the public are invited to tour the Property and view the artwork thereon between November 21, 2018 and January 2, 2019.
4. City shall pay all costs and expenses of providing parking control, traffic control, litter control, noise control and code enforcement specified in the Terms and Conditions (“Terms and Conditions”) reflected and documented in Exhibit B to that certain “SECOND ADDENDUM TO SETTLEMENT AGREEMENT” to which this Term Sheet is attached (the “Second Addendum”). Said Terms and Conditions are incorporated in their entirety by this reference herein for the RoboLights Annual Holiday Light Event. As such, RoboLights shall fully comply with, and is subject to all penalties reflected and documented in the Terms and Conditions.
5. RoboLights warrants and covenants that the RoboLights Annual Holiday Event regulated by the Terms and Conditions, commencing on November 21, 2018 through and including January 2, 2019, will be the **last** RoboLights Annual Holiday Light Event to take place at the Property or any portion thereof.
 - a. RoboLights will not advertise, attempt to conduct, conduct, or seek an “Event House Permit,” as set forth in Paragraph 6, to conduct its RoboLights Annual Holiday Light Event at the Property at any time after January 2, 2019. To avoid any neighborhood confusion in future years, notwithstanding any other provision of this Term Sheet, RoboLights shall not place Holiday lights on any artwork visible from public right-of-way or any residential property adjacent to the Property at any time, except pursuant to the issuance of an Event House Permit.
 - b. RoboLights further warrants and covenants that absent specific written authorization by the City, it shall not engage in any fashion of publicity activity, whether by advertisement, notice or other reference, and whether in print, on radio or television, or in any digital medium (*e.g.*, any social media platform), the planning or occurrence of any RoboLights Annual Holiday Light Event to take place at the Property after January 2, 2019 (“Publicity Activity”).
 - c. RoboLights understands and agrees that any violation of these warranties and representations, including Publicity Activity, shall be a violation of this Term Sheet. Further, RoboLights understands that such a violation will cause the City to incur substantial economic damages and losses of types and in amounts that are impossible to compute and ascertain, with certainty as a basis for recovery, by the City of actual damages.

RoboLights specifically agrees that liquidated damages represent a fair, reasonable and appropriate estimate of the City's actual damages. Accordingly, in lieu of actual damages for such violations, RoboLights agrees that liquidated damages shall be assessed and recovered by the City in the event of a breach or default in relation to the representations and/or warranties that specifically trigger the imposition of liquidated damages herein. In the event liquidated damages are imposed hereunder, City shall not be required to present any evidence of the amount or character of actual damages sustained because of any breach or default. Therefore, upon the occurrence of a breach or default in relation to this Paragraph 5 or Paragraph 6.a. and/or 6.b. below, Mr. Irwin and the Trust shall be jointly and severally liable to the City for payment of liquidated damages in the total amount of two hundred thousand dollars (\$200,000.00) less any amount returned to City under paragraph 7(c)(ii) of this Term Sheet in accordance with this Paragraph 5.c. City and RoboLights intend such liquidated damages to represent estimated actual damages and are not intended as a penalty, and RoboLights shall pay them to City.

- d. To ensure RoboLights' payment to City of liquidated damages due hereunder, RoboLights hereby stipulates that upon the occurrence of such violation to City's immediate recordation of a lien against the Property with the Riverside County Assessors-Recorder's Office for the total amount of two hundred thousand dollars (\$200,000.00) less any amount returned to City under paragraph 7(c)(ii) of this Term Sheet. RoboLights accepts and acknowledges that this Term Sheet shall be admissible evidence with respect to any proceeding arising from or related to City's recordation and/or perfection of any such lien.
- e. RoboLights warrants and covenants that it owns not less than two hundred thousand dollars (\$200,000.00) of equity in the Property ("Equity"), *i.e.*, RoboLights is the owner of an unencumbered interest in the Property with a fair market value of at least two hundred thousand dollars (\$200,000.00).
- f. RoboLights understands and acknowledges that it has the duty (the "Equity Duty") to provide written notice to City in the event that RoboLights knows or reasonably should know that its aggregate Equity in the Property declines below two hundred thousand dollars (\$200,000.00).
- g. In the event that RoboLights breaches or defaults in relation to this Equity Duty, any RoboLights Event, as that term is defined below in Paragraph 6, shall be prohibited in the City, until such time as RoboLights provides reasonable written evidence to the City that its Equity in the Property has been restored to the level of two hundred thousand dollars (\$200,000.00), and the occurrence of any RoboLights Event during such default shall trigger RoboLights' duty to pay liquidated damages to City under paragraph 5.c.
- h. In no event will the total liquidated damages for violations of this Term Sheet exceed two hundred thousand dollars (\$200,000.00), less any amount returned to City pursuant to Paragraph 7.c.ii of this Term Sheet.
- i. Notwithstanding anything in this Exhibit A or the Second Addendum to the contrary, the Trust shall only be liable for the liquidated damages in this Paragraph 5 or in Paragraph 6.b. to the extent of the Trust's total annual net income (the "Trust Income"), and the City shall not foreclose upon its lien on the Property so long as the Trust makes payment to the

- City of all Trust Income, in full, on a monthly basis (each payment being a “Trust Payment”) until the damages obligation is paid.
- j. The Trust warrants and covenants that the Trust Income exceeds two hundred thousand dollars (\$200,000.00). Further, the Trust understands and acknowledges that it has the duty (the “Trust Income Duty”) to provide written notice to City in the event that the Trust knows or reasonably should know that the Trust Income declines, or will decline, below two hundred thousand dollars (\$200,000.00).
 - k. In the event that the Trust provides written notice to the City, pursuant to the Trust Income Duty, the City and the Trust shall meet and confer, no more than ten (10) days after the date of the notice, in order to agree upon a reasonable substitute of funding the Trust Payments to City. In the event that no satisfactory substitute of funding for Trust Payments is identified *via* this meet and confer process, the liquidated damages shall be immediately payable in full by the Trust, and in the absence of immediate payment to the reasonable satisfaction of the City, the City may foreclose upon its lien on the Property regardless of Paragraph 5.i.
 - l. The Trust warrants and covenants that it will make all Trust Payments in a timely manner, until the entire amount of liquidated damages payable by the Trust is paid, and further warrants and covenants that in no event will the entire amount of liquidated damages remain unpaid beyond the date that is one (1) year after the first date of the initial violation of this Term Sheet that triggers the payment of liquidated damages (the “Liquidated Damages Due Date”).
 - m. In the event that the Trust breaches or defaults in relation to this Trust Income Duty or fails to pay the entire amount of liquidated damages on or before the Liquidated Damages Due Date, the City may foreclose upon its lien on the Property regardless of Paragraph 5.i.
 - n. In the event that any violation of this Term Sheet requires that either Mr. Irwin or the Trust makes payment to the City of liquidated damages or any portion thereof, and an additional violation of any provision of this Term Sheet takes place, City shall have the right to initiate equitable action in a court of competent jurisdiction (an “Equitable Action”), and present this Term Sheet as admissible evidence in a proceeding to secure relief that may include, without limitation, a restraining order or injunction that prevents Mr. Irwin or the Trust from holding any “RoboLights Event,” as that term is defined in Paragraph 6 below, at the Property. In any Equitable Action, the prevailing party shall be awarded reasonable attorneys’ fees by the court.
6. A RoboLights Event other than the RoboLights Annual Holiday Light Event (“RoboLights Event”) means any gathering, for any period of time, taking place or proposed to take place at the Property, at which gathering any person(s) in attendance will view Mr. Irwin’s art, including without limitation any tour, and at which time, which Mr. Irwin uses electricity in powering any lighting located on or about an artistic display visible from the public right-of-way or any adjacent residential property (“Use of Electricity”), and/or during which Mr. Irwin powers the movement of any artistic display located such that there is no object between the display in question and the Property’s perimeter wall (“Movement of a Perimeter Display”). A gathering at the Property that does not incorporate the Use of Electricity or the Movement of a Perimeter Display is not a RoboLights Event. However, all provisions of the Palm Springs Municipal Code (“PSMC”)

applicable to gatherings at residential properties shall apply to the Property at all times. RoboLights understands and agrees that it shall be a violation of this Term Sheet, and shall subject RoboLights to a duty to make payment to the City of liquidated damages as described in Paragraph 5.c if after January 2, 2019:

- a. any RoboLights Event takes place at the Property, without City Issuance of an Event House permit pursuant to PSMC Chapter 5.75, as applicable, and RoboLights compliance with the terms and conditions of that permit, and/or
- b. any other gathering of fifty (50) persons or more, which gathering involves the Use of Electricity or Movement of a Perimeter Display without City Issuance of a valid Event House Permit pursuant to PSMC Chapter 5.75, as applicable.

As is confirmed in Paragraph 5.a., RoboLights understands and agrees that it will not seek an Event House Permit for a RoboLights Annual Holiday Light Event after January 2, 2019.

7. City agrees to pay to Mr. Irwin (the "Payment"), within ten (10) days of the full execution of this Term Sheet, the sum of one hundred twenty-five thousand dollars (\$125,000.00). The City and Mr. Irwin understand and agree that the only purposes for which Mr. Irwin may use the Payment are funding relocation activities to **(i)** acquire, design, develop and construct a commercial site (the "Future Site"), which site will be used for future events that may be described as the illumination of sculptures and structures at any location apart from the Property, whereon members of the public are invited to tour the location, and view the artwork thereon, and/or **(ii)** move, transport or reconstruct art, located at the Property as of the date of this Term Sheet, to the Future Site ("Relocation Activities").

- a. Mr. Irwin warrants and covenants that if it identifies a particular property that it wants to acquire and utilize as the Future Site within the City of Palm Springs, it shall meet and confer with the City and must procure City approval of the property identified as a suitable site for the Future Site. To that end:
 - i. The Future Site must be and remain in compliance with all of City's zoning, and other standards and regulations, and in a location that is not less than a quarter mile, one thousand three hundred twenty (1,320) feet from any property that is residentially zoned.
 - ii. City warrants and covenants that in the event that the Future Site is within the City of Palm Springs it shall not unreasonably withhold its approval of a Future Site proposed by Mr. Irwin.
 - iii. If the Future Site is within the City of Palm Springs, the City shall waive all application, inspection, permit, license, and related fees concerning the Future Site and operations at the Future Site until December 31, 2020. Mr. Irwin understands and agrees that the City cannot and does not waive any fees payable to any other government agency or authority.
- b. Mr. Irwin shall transmit to City, a true, correct and complete copy of each actual invoice that arises from and relates to any Relocation Activities taking place prior to November 27, 2019 (each an "Invoice"), within ten (10) days of Mr. Irwin's payment upon the invoice in question. Each Invoice transmitted shall reflect detail sufficient for City to independently verify the nature and amount of any and all costs and expenses arising from and related to Relocation Activities, *e.g.*, identity and contact information for each person or entity

- completing work for Mr. Irwin in support of Relocation Activities (“Work”) and a clear description of all Work performed.
- c. The City and Mr. Irwin understand and agree that Mr. Irwin must and shall make and demonstrate to the City, substantial progress in Relocation Activities within eight (8) months of the end of the last RoboLights Event taking place at the Property, January 2, 2019 (“Substantial Progress”).
- i. For purposes of this Term Sheet, “Substantial Progress” means and includes:
 - 1. acquisition of the Future Site, **and**
 - 2. the completion by Mr. Irwin, or by its agents or contractors of Work, arising or related to specific Relocation Activities other than the acquisition of the Future Site, which Work has resulted in either:
 - a. payment of Invoices in an amount of twenty-five thousand dollars (\$25,000.00) or more (the “Relocation Work”), or
 - b. construction and development of completed works of art that covers twenty five percent (25%) or one (1) acre of the area of the Future Site, whichever area is less.
 - ii. If Mr. Irwin has not made Substantial Progress at or before the end of business on Thursday, September 5, 2019 (the “Substantial Progress Deadline”), Mr. Irwin shall return to the City any portion of the Payment not already spent by Mr. Irwin and documented, to City’s reasonable satisfaction, in funds dedicated to acquisition of the Future Site and Invoices received by the City prior to the end of business on Thursday, August 28, 2019.
- d. RoboLights has requested, and City has agreed to provide City personnel to assist RoboLights in compliance with Sections 3(b) and 3(c) of the Terms and Conditions for a period not to exceed three (3) days of RoboLights operation commencing at 3:30 p.m. on November 21, 2018, and ending no later than 10:30 p.m. on November 23, 2018 (the “Assistance”). City will not provide any Assistance after 10:30 p.m., November 23, 2018; any breach or default by RoboLights with respect to compliance with Sections 3(b) and 3(c) of the Terms and Conditions after that time and date shall be a violation of the Terms and Conditions. In exchange for this Assistance, RoboLights has agreed that the amount of the Payment that City will make to RoboLights shall be subject to an offset and reduced by the full actual City cost of providing the Assistance, whether *via* City personnel or contract personnel.

EXHIBIT B

EXHIBIT B

TERMS AND CONDITIONS

Section 1: Event Logistics re Date and Time:

- a)** Robolights shall occur beginning no earlier than Wednesday, November 21, 2018, and ending no later than January 2, 2019.
- b)** Robolights shall not open on any day earlier than 4:00 P.M., and must end no later than 10:00 P.M. each night of the event. All visitors must exit the Property no later than 10:00 P.M. Should Owner be unable to remove any person from the Property, he may contact the City's Contact Person for assistance. If Owner contacts the City's Contact Person prior to 10:00 P.M., and takes all reasonable steps to facilitate the removal of visitors from the Property, the presence of the visitors in question shall not constitute a violation of the provisions of these conditions.
- c)** No member of the general public shall be admitted to tour the Property later than 9:30 P.M.
- d)** All decorative lights associated with the event to be turned off no later than 10:00 P.M.
- e)** Sanctions for violations of Section 1:
 - i.** Each of the first four (4) violations that continues for a period of fifteen (15) minutes will be subject to an administrative citation issued per Palm Springs Municipal Code ("PSMC") Chapter 1.06, with escalating penalties per PSMC Section 1.06.040.
 - ii.** The fifth (5th) violation that continues for a period of fifteen (15) minutes will result in imposition of liquidated damages referenced below in Section 13(c) of these conditions, revocation of this permit, and in the termination of Robolights.

Section 2: Free Admittance / No Commercial Enterprise Activity

- a)** Owner shall not charge an entry fee or otherwise demand donations as a condition for entrance to the event.
- b)** Owner may use passive measures to solicit voluntary donations that do not incorporate any direct verbal interaction with guests but may use a machine which plays a pre-recorded message with the following "Welcome to Robolights, donations are not required but are appreciated." or similar verbiage, subject to review and approval by the City. These passive measures shall only be located at the entrance of the Property
- c)** Owner shall not sell any merchandise or food/beverage products to the public.
- d)** Sanctions for violations of Section 2:
 - i.** The first (1st) violation will be subject to issuance of an administrative citation with a penalty of five hundred dollars (\$500.00).

- ii. Any subsequent violation will be subject to imposition of liquidated damages referenced in section 13(c) of these conditions, revocation of this permit, and termination of Robolights.

Section 3: Offsite Crowd Control

- a) Guest parking shall occur only at Ruth Hardy Park.
- b) Owner shall provide Owner's staff with highly visible shirts or jackets (noted as "Event Staff" or equivalent), and with flashlights to coordinate off-site crowd control at each of the following six (6) locations:
 - i. One (1) posted at Avenida Caballeros / Tamarisk Road;
 - ii. One (1) posted at Avenida Caballeros / Via Altamira;
 - iii. One (1) posted at Avenida Caballeros / Granvia Valmonte;
 - iv. One (1) posted at Arquilla Road / Granvia Valmonte;
 - v. One (1) posted at Arquilla Road / Via Colusa; and
 - vi. One (1) posted on Granvia Valmonte between Avenida Caballeros and Arquilla Road.
- c) Owner's staff shall be posted throughout the entire duration of the Robolights, between the hours of 3:30 P.M. and 10:30 P.M., to prohibit and prevent any non-resident vehicles, including transportation network companies (Uber, Lyft, etc.) from entering the restricted streets, and from dropping off or picking up guests. Note: physically disabled guests arriving in appropriately equipped vehicles, or with appropriate placards or license plates, may be permitted to enter the restricted streets, and to pick-up, drop-off, or park in a designated space to be provided near the event.
- d) One (1) additional member of Owner's staff shall provide crowd control to maintain clear access on Granvia Valmonte for adjacent property owners, and to ensure all guests comply with noise control and are respectful of adjacent property owners.
- e) Sanctions for violations of Section 3:
 - i. A "violation" with regard to Section 4 occurs when the City observes that Owner's Event Staff is not posted as required herein.
 - ii. Each of the first four (4) violations that continues for a period of fifteen (15) minutes will be subject to an administrative citation issued per PSMC Chapter 1.06, with escalating penalties per PSMC Section 1.06.040.
 - iii. The fifth (5th) violation that continues for a period of fifteen (15) minutes will result in imposition of liquidated damages referenced below in Section 13(c) of these conditions, revocation of this permit, and in the termination of Robolights.

Section 4: Onsite Crowd Control

- a) Owner has submitted an occupant load study that established the maximum occupant load for the Property, in consultation with the Building Official.

- b) Owner has performed an emergency exit analysis to identify the necessary and appropriate measures to ensure adequate Property egress for Robolights guests, in consultation with the Building Official.
- c) Owner has implemented life safety measures at the Property, including installation of new panic hardware on existing gates, installation of new exit gates where necessary, in accordance with the analysis referenced in Section 4(b) and upon consultation with the Building Official.
- d) City's building official has approved the Onsite Crowd Control measures documented in this Section 4.

Section 5: Parking Control

- a) Owner shall identify an Uber / Lyft drop-off and pick-up location at Ruth Hardy Park, and coordinate with Uber and Lyft as necessary, to ensure drivers comply with the City's requirement to utilize Ruth Hardy Park for parking. An Uber / Lyft drop/off and pickup location for the event shall be established using GPS coordinates at the Ruth Hardy Park parking lot.
- b) Owner shall advertise on social media and other resources that all guests are required to use public parking and the Uber / Lyft drop-off and pick-up location located at Ruth Hardy Park; City will allow Owner to utilize the public parking lot consisting of ninety (90) parking spaces for this event at no charge to Owner.
- c) Barricades and signage shall be posted conspicuously at Ruth Hardy Park identifying the parking lot for "Event Parking."
- d) Owner shall provide 48" x 48" Event Parking signs installed and maintained at Alejo Road / Hermosa Drive, Alejo Road / Avenida Caballeros, Avenida Caballeros / Tamarisk Road, and Alejo Road / Via Miraleste indicating "Robolights Parking at Ruth Hardy Park." City reserves the right to adjust locations or require additional signs as may be reasonably necessary.

Section 6: Traffic Control:

- a) City shall be responsible for all costs associated with implementation and enforcement of a traffic control program, to restrict vehicular access on adjacent local streets to local property owners only, including restriction of on-street parking to permitted residents only
- b) Traffic control area shall be defined as the residential area located between Tamarisk Road and Alejo Road, extending from Via Miraleste to Hermosa Drive
- c) Barricades and signage required at and along the following streets:
 - 1) Alejo Road both sides from Hermosa Drive to Via Miraleste (Barricades with "No Parking – Permit Only / 3PM to 11PM") every 200 feet;
 - 2) Avenida Caballeros west side (Barricades with "No Parking – Permit Only / 3PM to 11PM") every 200 feet;

- 3)** Avenida Caballeros east side from Tamarisk Road to Granvia Valmonte (Barricades with “No Parking / Pedestrian Walkway”) every 50 feet with lights, lighted rope and other measures);
- 4)** Avenida Caballeros east side from Granvia Valmonte to Alejo Road (Barricades with “No Parking – Permit Only / 3PM to 11PM”) every 200 feet;
- 5)** Arquilla Road (Lighted Barricades with “Local Traffic Only – No Through Traffic / 3PM to 11PM”) at Tamarisk Road and Alejo Road;
- 6)** Arquilla Road west side from Tamarisk Road to Granvia Valmonte (Barricades with “No Parking – Permit Only / 3PM to 11PM”) every 200 feet;
- 7)** Arquilla Road west side from Granvia Valmonte to Via Colusa (Barricades with “No Parking / Pedestrian Walkway”) every 50 feet with lights, lighted rope and other measures);
- 8)** Arquilla Road west side from Via Colusa to Alejo Road (Barricades with “No Parking – Permit Only / 3PM to 11PM”) every 200 feet;
- 9)** Arquilla Road east side from Tamarisk Road to Alejo Road (Barricades with “No Parking – Permit Only / 3PM to 11PM”) every 200 feet;
- 10)** Arquilla Road at Via Colusa – Northwest Corner (Barricade with “No Parking – Permit Only / 3PM to 11PM”);
- 11)** Arquilla Road at Granvia Valmonte – Southeast Corner (Barricade with “No Parking – Permit Only / 3PM to 11PM”);
- 12)** Camino Real both sides (Barricades with “No Parking – Permit Only / 3PM to 11PM”) every 200 feet;
- 13)** Granvia Valmonte (Lighted Barricades with “Local Traffic Only – No Through Traffic / 3PM to 11PM”) at Avenida Caballeros, Arquilla Road, and Hermosa Drive;
- 14)** Granvia Valmonte south side from 1077 Granvia Valmonte east to Arquilla Road (Barricades with “No Parking / Pedestrian Walkway”) every 50 feet with lights, lighted rope and other measures);
- 15)** Granvia Valmonte both sides (Barricades with “No Parking – Permit Only / 3PM to 11PM”) every 200 feet;
- 16)** Hermosa Drive both sides (Barricades with “No Parking – Permit Only / 3PM to 11PM”) every 200 feet;
- 17)** Los Nietos Road both sides (Barricades with “No Parking – Permit Only / 3PM to 11PM”) every 200 feet;
- 18)** Phillips Road both sides (Barricades with “No Parking – Permit Only / 3PM to 11PM”) every 200 feet;
- 19)** Tamarisk Lane both sides (Barricades with “No Parking – Permit Only / 3PM to 11PM”) every 200 feet;
- 20)** Via Altamira (Lighted Barricades with “Local Traffic Only – No Through Traffic / 3PM to 11PM”) at Avenida Caballeros and Hermosa Drive

- 21)** Via Altamira both sides (Barricades with “No Parking – Permit Only / 3PM to 11PM”) every 200 feet;
- 22)** Via Colusa (Lighted Barricades with “Local Traffic Only – No Through Traffic / 3PM to 11PM”) at Avenida Caballeros and Hermosa Drive
- 23)** Via Colusa both sides (Barricades with “No Parking – Permit Only / 3PM to 11PM”) every 200 feet;
- 24)** Via Colusa north side from 1050 Via Colusa to Arquilla Road (Barricades with “No Parking / Pedestrian Walkway”) every 50 feet with lights, lighted rope and other measures);
- 25)** Barricades and signage shall be posted conspicuously at Ruth Hardy Park identifying the parking lot for “Event Parking;”
- 26)** 48” x 48” Event Parking signs indicating “Robolights Parking at Ruth Hardy Park” shall be posted and maintained at:
 - a. Alejo Road / Hermosa Drive;
 - b. Alejo Road / Avenida Caballeros;
 - c. Avenida Caballeros / Tamarisk Road;
 - d. Alejo Road / Via Miraleste; and
 - e. Other locations deemed necessary by City
- d)** City will coordinate preparation of a traffic control plan meeting California Manual of Uniform Traffic Control Devices standards, including legally required California Vehicle Code or PSMC references providing for traffic enforcement.
- e)** All signage to be professionally produced, all weather signage by an approved traffic control vendor.
- f)** City Engineer reserves the right to adjust the parameters of the traffic control area as may be necessary given traffic conditions caused by the event.
- g)** City will coordinate with a traffic control vendor to supply and install the required traffic control devices in accordance with the City approved traffic control plan.
- h)** City shall be responsible for maintaining all traffic control devices in their approved locations, and for ensuring any traffic control devices that are otherwise relocated or removed or promptly relocated or replaced to their required locations.
- i)** The absence of any barricade or signage required under this Section 6 shall be a violation. City shall provide notification to Owner’s management contact as to any violation determined to exist. Notification shall be deemed to have occurred upon the Parking Enforcement Officer’s phone call and voicemail to Owner’s management contact.
- j)** Sanctions for violations of Section 6:
 - i. Each of the first four (4) violations that continues for a period of twenty-four (24) hours will be subject to an administrative citation issued per Palm Springs Municipal Code (“PSMC”) Chapter 1.06, with escalating penalties per PSMC Section 1.06.040.

- ii. The fifth (5th) violation that continues for a period of twenty-four (24) hours will result in imposition of liquidated damages referenced below in Section 13(c) of these conditions, revocation of this permit, and in the termination of Robolights.

Section 7: Litter Control

- a) Owner shall be responsible for implementing a litter control program of all effected streets located within the traffic control area; the litter control program shall require daily/nightly monitoring of all streets within the traffic control area, and collecting/disposing of any trash found on the streets
- b) City shall arrange, through Palm Springs Disposal Services ("PSDS"), installation of two (2) temporary trash containers at each of the following intersections within the traffic control area: Avenida Caballeros/Tamarisk Road, Avenida Caballeros/Via Altamira, Avenida Caballeros/Granvia Valmonte, Avenida Caballeros/Via Colusa, Arquilla Road/Tamarisk Road, Arquilla Road/Via Altamira, Arquilla Road/Granvia Valmonte, Arquilla Road/Via Colusa, and such other locations as required to ensure effective litter control.
- c) Owner shall collect and store all temporary trash containers at the Property at the conclusion of each night of Robolights, and set up at each location prior to each night's event; Owner shall properly dispose of all litter, and prevent the accumulation of trash from becoming a nuisance.
- d) Owner shall arrange at City's cost, through PSDS installation of a temporary roll off dumpster, to be located onsite at the Property, to contain all disposed refuse generated off-site on adjacent public streets; all litter collected nightly shall be disposed of in the dumpster and collected not less than once per week by PSDS
- e) Litter control shall be monitored nightly during and after the event by Owner's personnel; all litter shall be removed from the traffic control area, and subject to proper disposal by Owner.
- f) City's Parking Enforcement Officer shall monitor for effective litter control, and Owner shall comply with the Officer's directions regarding litter control problems discovered during Robolights. City's Parking Enforcement Officer shall notify the Owner's management contact of any litter control problems discovered. Owner will have thirty (30) minutes from the time City's Parking Enforcement Officer notifies Owner to resolve the litter problem.
 - i. Notification shall be deemed to have occurred upon the Parking Enforcement Officer's phone call and voicemail to Owner's management contact.
- g) Sanctions for violations of Section 7:
 - i. Each of the first four (4) violations that continues for a period of thirty (30) minutes will be subject to an administrative citation issued per Palm Springs Municipal Code ("PSMC") Chapter 1.06, with escalating penalties per PSMC Section 1.06.040.

- ii. The fifth (5th) violation that continues for a period of thirty (30) minutes will result in imposition of liquidated damages referenced below in Section 13(c) of these conditions, revocation of this permit, and in the termination of Robolights.

Section 8: Noise Control

- a) Owner shall be responsible for implementing a noise control program to minimize noise generated by attendees of the event at the property or along effected streets within the traffic control area
- b) Amplified outdoor music at the property is prohibited in accordance with Palm Springs Municipal Code 11.74.43(f)
- c) City's Parking Enforcement Officer shall monitor for effective noise control by Owner, and Owner shall comply with the Officer's directions regarding noise control problems discovered during the event. City's Parking Enforcement Officer shall notify the Owner's management contact of any noise control problems discovered. Owner will have thirty (30) minutes from the time City's Parking Enforcement Officer notifies Owner to rectify the noise problem.
 - i. Notification shall be deemed to have occurred upon the Parking Enforcement Officer's phone call and voicemail to Owner's management contact.
- d) Sanctions for violations of Section 8:
 - i. Each of the first four (4) violations that continues for a period of thirty (30) minutes will be subject to an administrative citation issued per Palm Springs Municipal Code ("PSMC") Chapter 1.06, with escalating penalties per PSMC Section 1.06.040.
 - ii. The fifth (5th) violation that continues for a period of thirty (30) minutes will result in imposition of liquidated damages referenced below in Section 13(c) of these conditions, revocation of this permit, and in the termination of Robolights.

Section 9: Sanitation

- a) Owner may provide on-site sanitary services (*i.e.*, restrooms), located entirely on-site and at least twenty (20) feet from the street, subject to review and approval by the City.

Section 10: Management Contact

- a) Owner shall provide City with a name and mobile telephone number of a contact (and an alternate contact) with whom management functions of the event are assigned on a nightly basis; the management contact (or alternate) must be available at all times during the event to respond to any concerns related to implementation and enforcement of the conditions of the event.
- b) City shall provide the name and mobile telephone number of a contact person (and an alternate contact) from the City to assist Owner with issues related to the event.

Section 11: Event Close Out

- a) Owner shall remove all temporary holiday decorations and lighting, and other non-permanent displays not later than thirty (30) calendar days following the close of the event, *i.e.*, February 7, 2019.
- b) A violation shall occur each day when such temporary decorations, lighting and non-permanent displays remain in place after the close of the event.
- c) Sanctions for violations of Section 11:
 - i. For each of the first four (4) dates upon which a violation occurs, (*i.e.*, February 8, February 9, and February 10), that violation will be subject to administrative citations issued per Chapter 1.06, with escalating penalties per 1.06.040.
 - ii. On the fifth (5th) date upon which a violation occurs (*i.e.*, February 11), the violation that occurs will result in imposition of liquidated damages referenced in Section 13(c) of these conditions..

Section 12: Code Enforcement

- a) City shall be responsible for all costs associated with implementation and enforcement of these conditions, including monitoring by City code enforcement staff
- b) City retains authority to assign additional Code Enforcement Officers to monitor the event during peak times, at City's cost, including Thanksgiving weekend, Christmas, and New Year's Eve.

Section 13: Sanctions for Violations:

- a) Each Administrative Citation issued pursuant to Section 1(e), 2(d), 3(g), 6(l), 7(g), 8(d), and 11(c) shall be subject to appellate review under the procedures designated in PSMC Chapter 1.06.
- b) For each violation observed by the City, in addition to issuance of a citation to Owner or one of Owner's employees, contractors, or volunteers at the Property, the City shall transmit digital notice of the issuance of the citation, *via* email or text message, to Owner's management contact, with a courtesy copy emailed to Owner at pigeonyolk@aol.com. This notice may be conveyed *via* a copy of an administrative citation, or any other written means by which the City identifies the time, date, and nature of the alleged violation.
- c) In addition to the sanctions identified within this Agreement, in the event the Owner has been issued a total of seven (7) different administrative citations for various violations of the various Sections of this Agreement, the eighth (8th) violation will result in imposition of liquidated damages in the amount of twenty thousand dollars (\$20,000.00) as is set forth in the Settlement, and in termination of the 2018 Robolights Event. The City shall notify the Owner in writing of the eighth (8th) violation, and the associated sanction.

- i. Owner may appeal the decision to impose sanctions related to an eighth (8th) violation pursuant to this Section 13(c) within ten (10) days of notice. The appeal must be in writing, and must reflect the appellant's full name and mailing address. It must be accompanied by payment of all penalties alleged to be due by City with the exception of the liquidated damages alleged due, and by payment of the City's standard appeal fee as established by city council resolution. Any appeal must specify the basis for the appeal in detail, and must be filed with the city clerk's office. If the appeal deadline falls on a day when City Hall is closed, then the deadline shall be extended until the next regular business day.
- ii. The City Manager shall fix a date, time, and place for the hearing of the appeal pursuant to PSMC Chapter 2.50 which shall be within seven (7) days of receipt of written appeal. Written notice of the appeal date will be served by first class mail to Owner, as well as via email to pigeonyolk@aol.com.
- iii. Should the Administrative Appeals Board be unable to hear the matter within the time proscribed in Section 13(c)(ii), then within fourteen (14) days the appellate matter shall be heard by either an arbitrator paid by the City.
 - (a) A list of three (3) facilitators, employed by Desert ADR, JAMS, or Judicate West, to provide said arbitration shall be provided by Owner to City for their selection.
 - (b) The arbitrator selected by City shall determine the underlying validity of the violations challenged by the appeal in a manner consistent with PSMC Chapter 2.50, or consistent with that Chapter as it may be amended subsequent to execution of the SECOND ADDENDUM TO SETTLEMENT AGREEMENT (the "Addendum") to which these terms and conditions are attached, and in which these terms and conditions are incorporated by reference.
- iv. During the pendency of any appeal pursuant to sanctions provided for in this Section 13(c), the permit issued per this Agreement will remain valid. Additionally, during the pendency of any appeal, the imposition of liquidated damages listed in this Agreement shall be suspended.

The existence of Owner's duty to pay liquidated damages hereunder with respect to this Section 13(c) does not in any way limit Owner's duty to pay liquidated damages with respect to violations of the "RoboLights 2018-19 – TERM SHEET," also attached to and incorporated by reference in the Addendum.